

APR 06 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CLETO HERNANDEZ-ORTIZ,

Petitioner,

v.

ERIC H. HOLDER, Jr., Attorney General,

Respondent.

No. 06-74605

Agency No. A029-613-364

MEMORANDUM \*

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted March 18, 2009 \*\*

Before: LEAVY, HAWKINS, and TASHIMA, Circuit Judges.

Cleto Hernandez-Ortiz, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's decision denying his application for cancellation of removal.

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\* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

\*\* The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

We have jurisdiction pursuant to 8 U.S.C. § 1252. We review for substantial evidence the agency's continuous physical presence determination, *Lopez-Alvarado v. Ashcroft*, 381 F.3d 847, 850-51 (9th Cir. 2004), and we deny the petition for review.

Contrary to Hernandez-Ortiz's contention, the 1997 reinstatement of his deportation order was not unlawful. *See Duran Gonzales v. DHS*, 508 F.3d 1227, 1241-42 (9th Cir. 2007), *abrogating Perez-Gonzalez v. Ashcroft*, 379 F.3d 783 (9th Cir. 2004). Substantial evidence therefore supports the BIA's determination that Hernandez-Ortiz failed to establish the requisite continuous physical presence due to his four-month absence from the United States. *See* 8 U.S.C. §§ 1229b(b)(1)(A), (d)(2).

We do not reach Hernandez-Ortiz's remaining contentions because the continuous physical presence determination is dispositive. *See id.* § 1229b(b).

**PETITION FOR REVIEW DENIED.**